Supreme Court, U. S.
FILED
JUL 7 1975
MICHAEL RODAK, JR., CLERK

APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1270

RUSSELL TRAIN, ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY, ET AL.,
Petitioners

—*v.*—

COLORADO PUBLIC INTEREST RESEARCH GROUP, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 8, 1975
CERTIORARI GRANTED JUNE 2, 1975

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

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RUSSELL TRAIN, ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY, ET AL.,
Petitioners

—*v.*—

COLORADO PUBLIC INTEREST RESEARCH GROUP, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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[1] The judgment and opinion entered December 9, 1974, in the court of appeals are printed as Appendices A and B to the petition for certiorari.

[2] The opinion issued February 15, 1974, by the district court is printed as Appendix C to the petition for certiorari.

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"Fact sheets" issued by Permits Branch, Enforcement Division, Denver Regional Office, Environmental Protection Agency [Ex. A and B to plaintiffs' memorandum in support of motion for judgment on the pleadings, filed in district court January 31, 1974] 21

DOCKET ENTRIES

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

No. 74-1154

DATE	FILINGS—PROCEEDINGS
3/26/74	Cause docketed; docketing statement
3/28/74	Appearance—Appellant—Kurtz-Phelan
3/29/74	Appearance—Appellant—Engdahl
3/29/74	Appearance—Appellant—Mastbaum
4/5/74	Record on appeal, Vol. I (pleadings)
4/8/74	Appearance—appellee—Johnson, Clark & Snel Order—assigned to Calendar B; appellant's brief due 4/29/74—Lewis
4/29/74	Motion of Minnesota Pollution Control Agency for leave to join in the *Amicus Curiae* brief of the State of Minnesota
	Brief of the State of Minnesota as amicus curiae—Joint brief of the Minnesota Pollution Control Agency as amicus curiae—To panel on 5/10/74 Filed 5/29/74
	Brief of the States of Arkansas, Kansas, Michigan, Commonwealth of Pennsylvania and State of Washington as amici curiae
	Statement of Considerations (Environmental Radiation Standards for the Uranium Fuel Cycle)
	Public Law 92-500, 92nd Congress, S. 2770, 10-18-72
	History of the Water Pollution Control Act Amendments of 1974—Vol I
	History of the Water Pollution Control Act Amendments of 1974—Vol. II
	Federal Register, Tuesday, May 22, 1973, Vol. 38, No. 98, Part III

DATE	FILINGS—PROCEEDINGS

Brief of the appellants

Record on Appeal, Vol. I

5/6/74 Appearances—For Amicus-Michigan—Kelley, Kutinsky, Freeman

5/13/74 Appearance—For Amicus-Washington—Roe

5/10/74 Appearance — For Amicus-Arkansas — Tucker, Frawley

5/16/74 Appearance—For Amicus-Pa.—Eichbaum

5/24/74 Motion—Appellee's req. to ext. time to 6/3/74 to file brief

5/24/74 Order: Appellee (USA) granted to 6/3/74 to file brief

5/29/74 Order: Minn. Polution Control Agency granted leave to file an amicus curiae brief and join in the brief of the State of Minn. (Lewis, McWilliams, Doyle) (brief filed as of this date)

6/5/74 Appellee's preliminary brief

6/13/74 Appellee's brief

6/17/74 Appellants' Reply Brief

7/10/74 Appellants' motion to expedite the hearing and disposition of case

7/25/74 Order. Upon consideration of appellants' motion to expedite hearing and disposition of this case, the motion is GRANTED. (Lewis, McWilliams)

7/30/74 Set for Hearing—September 1974 Term of Court

8/15/74 Appearance—amicus curiae (St. of Minn.)—Spannaus, Sipkins and Kaul

9/12/74—Letter-motion by U.S. requesting leave of Court to complete argument early—0 & 3cc—(To Panel)

DATE	FILINGS—PROCEEDINGS

9/13/74 Argued and submitted—Holloway, McWilliams, Christensen

12/9/74 Opinion—Holloway, *McWilliams*, Christensen (Publish)
Judgment: Reversed and remanded for further proceedings.

12/23/74 Appellant's letter citation
Appellant's bill of costs
Appellant's motion for attorneys fees
Appellant's memorandum in support of appellants' motion for attorneys fees—to panel

12/31/74 Mandate only to Clerk

1/3/75 Appellees' motion to file out of time opposition to appellants' motion for attorneys' fees (To Panel)
Appellees' opposition to appellants motion for attorneys' fees and appellees' motion for leave to file responsive brief by January 20, 1975 (To Panel)

1/8/85 Order: Appellees' motion for leave to file its opposition to Appellants' motion for attorneys' fees is *granted.* Appellants motion for award of attorneys' fees is *denied* but denial of the motion is without prejudice to Appellants' right to reassert the motion for allowance of fees to the trial court—this Court being of the opinion that the matter should first be presented to the trial court for a ruling. (Holloway, McWilliams, Christensen)

1/17/75 Receipt for mandate.

1/27/75 O-ROA to District Court.

1/31/75 Receipt for O-ROA

4/15/75 Supreme Court notice of filing petition for certiorari in No. 74-1270 on 4/8/75.

6/9/75 Supreme Court certificate evidencing granting of certiorari in No. 74-1270 on 6/2/75

DOCKET ENTRIES

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

No. C-5438

DATE	PROCEEDINGS
1973	
10/15	COMPLAINT FOR DECLARATORY JUDGMENT AND FOR INJUNCTIVE RELIEF Summons Issued
10/19	Return of U. S. Marshals Service by Serving 1 copy Certified Mail #220220, RRR, on Russell Train, Administrator, U.S.E.P.A., Washington, D.C. 10/17/73. Return of U. S. Marshals Service by serving 2 copie Certified Mail #220219, RRR on Attorney General, Washington, D.C., and 1 copy of U.S. Attorney, Denver, Colorado for U. S. Environmental Protection Agency, Washington, D.C. 10/17/73.
12/14	MOTION of Defts for Extension of time in which to file a response to the Complaint. . . . Cert. of Service.
12/21	Signed (FMW 12/18/73) ORDER . . . Defts. shall have extension of time in which to file a response to the Complaint unto and including 1/16/74. . .
1974	
1/2	Request of Pltfs. for Production of Documents
1/18	MOTION of Defts. to Dismiss, or in the alternative Summary Judgment. Memorandum in Support of Defts' Motion to Dismiss, or in the alternative, Summary Judgment . . .
1/25	MOTION of Defts. to Stay Discovery or, in the alternative, Motion to Extend the Time within which to respond to Pltf's Request for Production of Documents Memorandum in support of Defts' Motion to Stay or, in the alternative, Motion for an Extension of Time

DATE	PROCEEDINGS
1/31	MOTION of Pltfs. for Judgment on the Pleadings, or in the alternative, Summary Judgment
2/15	HEARING (FMW) Cross Motions for Summary Judgment . . . Arguments . . . Ordered: Pltf's Motion for Summary Judgment is granted . . . The Court will submit a written Findings either later today or Tuesday 2/19/74 . . . Counsel for Pltf argues on application for attorney's fees is denied . . . Recess . . . Signed (FMW) MEMORANDUM OPINION GRANTING SUMMARY JUDGMENT . . . The request for an award of attorneys fees is denied, and summary judgment shall enter against pltfs and in favor of the defts. . . Signed (FMW) JUDGMENT . . . Ordered: the action and complaint are dismissed and the request of counsel for the pltf. for an award of attorneys fees is denied. Further Ordered: the defts shall have their costs upon the filing of a Bill of Costs with the Clerk of this Court . . .
2/25	NOTICE OF APPEAL . . . filed by Pltf.
3/6	Designation of Contents of Record and Statement of Issue on Appeal
4/5	Receipt of U.S.C.A. for record on appeal Volume I
12/31	MANDATE Received . . . Ordered: Judgment is reversed. The cause is remanded to the U. S. District Court for the District of Colorado for further proceedings in accordance with the opinion of this court . . . eod 1/13/75
1975	
1/29	Volume I of the Record on Appeal received.
4/15	Ltr to Hon. Holloway, McWilliams and Christensen . . . from the 10th Cir. Ct. of Appeals A Petition for Writ of Certiorari was filed in the U. S. Supreme Court and given No. 74-1270.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. C-5438

[Filed Oct. 15, 1973, United States District Court,
Denver, Colorado, James R. Manspeaker, Clerk]

COLORADO PUBLIC INTEREST RESEARCH GROUP, INC., a non-profit Colorado Corporation, COLORADO ENVIRONMENTAL LEGAL SERVICES, INC., a non-profit Colorado Corporation, MORGAN SMITH, FRANK ANDERS, A. M. WINCHESTER, and FRANK L. BOULTER, PLAINTIFFS

—*vs*—

RUSSELL TRAIN as Administrator,
United States Environmental Protection Agency,
401 M. St., S.W., Washington, D.C. 20460

and

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,
401 M. St., S.W., Washington, D.C. 20460,
DEFENDANTS

COMPLAINT FOR DECLARATORY JUDGMENT AND FOR INJUNCTIVE RELIEF

INTRODUCTION

1. Plaintiffs bring this action against the Administrator of the United States Environmental Protection Agency (hereafter Administrator) and the United States Environmental Protection Agency (hereafter EPA) to compel them to perform their mandatory, non-discretionary duty to regulate all radioactive effluents, including source, by-product, or special nuclear materials as defined by the Atomic Energy Act of 1954, 42 U.S.C. Sec. 2011 *et seq.*, pursuant to the clear and unambiguous language of the Federal Water Pollution Control Act Amendments

of 1972, 33 U.S.C. Sec. 1251 *et seq.* (Supp. 1973), (hereafter the Act). As is fully set out below, defendants have wrongfully failed to regulate all radioactive effluents as required by the Act by excluding certain radioactive effluents from the definition of pollutant by administrative action when both the Act and Regulations clearly define pollutant as including all radioactive materials. This breach of duty by the defendants has left a substantial and dangerous gap in the water quality enforcement program of the EPA and has jeopardized the Act's goals. Plaintiffs seek a declaratory order that all radioactive materials including those which are encompassed within the meaning of source, by-product, or special nuclear materials as defined by the Atomic Energy Act of 1954, are pollutants within the meaning of the Act, and the discharge of all radioactive materials is unlawful except as in compliance with the provisions of the Act. Plaintiffs further seek an order directing the defendants to regulate all radioactive materials pursuant to the clear statutory mandate of the Act.

2. Radioactive effluents are or will be discharged into the waters of Colorado from the Atomic Energy Commission's Rocky Flats Plant located between Boulder, Colorado, and Golden, Colorado, and the Fort St. Vrain Nuclear Generating Station located at Platteville, Colorado.

3. The Rocky Flats Plant is managed for the Atomic Energy Commission by the Dow Chemical Company. The Plant is a plutonium processing facility that handles both plutonium and uranium as well as other potentially hazardous materials. It manufactures components of atomic bombs including parts of nuclear triggers. Radioactive effluents which have been discharged from the plant or are currently being discharged include plutonium—239, americium—241, as well as tritium.

4. The Rocky Flats Plant currently collects semi-monthly water samples from four reservoirs and nine tap water loactions around the Rocky Flats and greater Denver areas for possible radioactive contamination. The reservoirs include: (1) Baseline, whose primary use is a source of irrigation water; (2) Ralston Reservoir, the

water supply for portions of Denver, Arvada, Wheatridge and the Rocky Flats Plant; (3) Great Western Reservoir, which is the Broomfield water supply, and (4) Standley Lake, which serves Westminster and portions of the Thornton-Northglenn Area. Tap or treated water is collected from the surrounding communities of Arvada, Boulder, Broomfield, Denver, Golden, Lafayette, Louisville, Thornton, and Westminster.

5. The Fort St. Vrain Nuclear Generating Station is owned by the Public Service Company of Colorado. The facility is the first commercial-sized, high temperature, gas-cooled nuclear reactor.

6. Defendants have refused to regulate or even consider any matter concerning radioactive effluents from these facilities.

JURISDICTION AND VENUE

7. The jurisdiction of this Court is invoked under 33 U.S.C. Sec. 1365 (a) (2) (Supp. 1973) (Citizen suits against Administrator of the United States Environmental Protection Agency pursuant to 1972 Amendments to the Federal Water Pollution Control Act to compel the performance of an act or duty which is not discretionary under said Act); 5 U.S.C. Secs. 701-706 (Administrative Procedure Act); 28 U.S.C. Sec. 1331 (Federal Question); 28 U.S.C. Secs. 2201-2202 (Declaratory Judgment Act); 28 U.S.C. Sec. 1361 (Action to Compel an officer of the United States to perform his duty). The amount in controversy exceeds $10,000.00, exclusive of interest and costs.

8. Venue of this action is in the United States District Court for the District of Colorado by virtue of 28 U.S.C. Sec. 1391 (e).

PARTIES

9. Plaintiff, Colorado Public Interest Research Group, Inc. (hereafter COPIRG) is a non-profit Colorado Corporation. Its principal office is located in Room 200; 209 16th Street; Denver, Colorado 80202. COPIRG has a statewide membership composed of students at various

colleges and universities in Colorado, dedicated to the promotion of social welfare, including the defense and preservation of the human environment and natural resources of Colorado.

10. COPIRG's members use and depend on the waters of Colorado for water and food supply, transportation and recreation. The quality of these waters directly affects the health, economic, recreational, aesthetic and environmental interests of these individuals.

11. Many of COPIRG's members reside in the County of Weld, State of Colorado, and the County of Boulder, State of Colorado. They are or will be directly affected by the discharge of radioactive effluents into the waters of Colorado from the Rocky Flats Plant and/or the Fort St. Vrain Nuclear Generating Station.

12. Plaintiff, Colorado Environmental Legal Services, Inc. (hereafter CELS), is a non-profit Colorado Corporation. Its principal office is located in Room 200, 209 16th Street, Denver, Colorado 80202. Its membership is composed of law students in the State of Colorado dedicated to the preservation of the environment through legal research, advocacy, educational and informational activities.

13. CELS members use and depend on the waters of Colorado for water and food supply, transportation, and recreation. The quality of these waters directly affects the health, economic, recreational, aesthetic and environmental interests of these individuals.

14. Many of CELS members reside in the Denver Metropolitan a[illegible]a. They are directly affected by the discharge of radioactive effluents into the water of Colorado from the Rocky Flats Plant.

15. Plaintiff Morgan Smith is a resident of Brighton, Colorado, and is a member of the Colorado House of Representatives for the 31st District. He uses and depends on the waters of Colorado for water and food supply, transportation and recreation. The quality of these waters directly affects his health, economic, recreational, aesthetic and environmental interests, as well as those of his constituents in the 31st Legislative District.

16. Plaintiff Smith and his constituents are specifically and directly affected by the discharge of radioactive effluents from the Rocky Flats Plant in that sewage from Broomfield, Colorado, which includes tap water contaminated by radioactive water from the Rocky Flats Plant flows into Big Dry Creek which flows into the 31st Legislative District in Adams County and eventually the South Platte River. Certain of Plaintiff Smith's constituents also receive their drinking water from the Great Western Reservoir which contains radioactive effluents from the Rocky Flats Plant.

17. Plaintiff Frank Anders is a resident of Greeley, Colorado, and a professor at the University of Northern Colorado in Greeley. He uses and depends on the waters of Colorado for water and food supply, transportation and recreation. The quality of these waters directly affects his health, economic, recreational, aesthetic, and environmental interests.

18. Plaintiff Anders is directly affected by the discharge of radioactive effluents into the South Platte River which flows through Greeley. Radioactive effluents from both the Fort St. Vrain Nuclear Generating Station and the Rocky Flats Plant eventually flow into the South Platte.

19. Plaintiff A. M. Winchester is a resident of Greeley, Colorado and a professor at the University of Northern Colorado in Greeley. He uses and depends on the waters of Colorado for water and food supply, transportation, and recreation. The quality of these waters directly affects his health, economic, recreational, aesthetic and environmental interests.

20. Plaintiff Winchester is directly affected by the discharge of radioactive effluents into the South Platte River which flows through Greeley. Radioactive effluents from both the Fort St. Vrain Nuclear Generating Station and the Rocky Flats Plant eventually flow into the South Platte.

21. Plaintiff Frank L. Boulter is a resident of LaSalle, Colorado, and is engaged in the business of farming. His agricultural interests include cattle, alfalfa, and

sorghum and he owns various tracts of land in the Platte Basin. Plaintiff Boulter uses and depends on the waters of Colorado for water and food supply, his livelihood, transportation, and recreation. The quality of these waters greatly affects his health, economic, recreational, aesthetic, and environmental interests.

22. Plaintiff Boulter is directly affected by the discharge of radioactive effluents into the South Platte River which borders his land. Radioactive effluents from both the Fort St. Vrain Nuclear Generating Station and the Rocky Flats Plant eventually flow into the South Platte.

23. All plaintiffs are members of the class of persons whom the Act was intended to benefit and protect. Plaintiffs must depend upon the Administrator and the EPA to protect their interest in clean water, free from radioactive contamination pursuant to the provisions of the Act. The interests of the plaintiffs have been and continue to be adversely affected and aggrieved by the acts of defendants specified herein.

24. Defendant Russell Train is the Administrator of the United States Environmental Protection Agency. The Administrator is charged by 33 U.S.C. Sec. 1251 (d) (Supp. 1973) with administering the Federal Water Pollution Control Act Amendments of 1972, including the publishing and promulgation of guidelines and regulations.

25. Defendant United States Environmental Protection Agency (hereafter EPA) is the federal agency administered by and responsible to the Administrator. As such, it is responsible for administering the Federal Water Pollution Control Act Amendments of 1972, including the publishing and promulgation of guidelines and regulations.

STATEMENT OF THE CLAIM

26. The Federal Water Pollution Control Act Amendments of 1972 were passed by Congress on October 18, 1972, over the veto of the President. The Act was effec-

tive immediately, 33 U.S.C. Sec. 1251 *et seq.* (Supp. 1973).

27. The Act's "Declaration of Goals and Policy" states in part [33 U.S.C. Sec. 1251 (Supp. 1973)] that:

> (a) The objective of this Act is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. In order to achieve this objective it is hereby declared that, consistent with the provisions of this Act—"(1) it is the national goal that the discharge of pollutants into the navigable waters be eliminated by 1985; (2) it is the national goal that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water, be achieved by July 1, 1983. . . .

28. The Act provides that the discharge of any pollutant by any person is unlawful except as in compliance with certain provisions of the Act, 33 U.S.C. Sec. 1311 (a) (Supp. 1973). 33 U.S.C. Sec. 1342 (a) (1) provides in part that: "[T]he Administrator may . . . issue a permit for the discharge of any pollutant or combination of pollutants, notwithstanding section 1311 (a) of this title."

29. Radioactive effluents are one of the forms of water pollution which the Act has singled out for regulation and eventual elimination. Thus, the term "pollutant" is specifically defined as including "radioactive materials" 33 U.S.C. Sec. 1362 (6) (Supp. 1973). Further, the Act defines "pollution" as "the man-made or man-induced alteration of the . . . radiological integrity of water", 33 U.S.C. Sec. 1362 (19) (Supp. 1973).

30. On May 22, 1973, the Administrator pursuant to 33 U.S.C. Secs. 1342, 1345 (Supp. 1973), issued regulations [38 Fed. Reg. 13, 528,-13, 540 (1973)] for the National Pollutant Discharge Elimination System, 33 U.S.C. Sec. 1392 (Supp. 1973). Section 125.1 (x) [38 Fed. Reg. 13, 529 (1973)] of these regulations, the definitional section provides that:

> The term "pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, *radioactive materials*, heat, wrecked or discharged equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. It does not mean (1) "sewage from vessels" or (2) water, gas, or other materials which is injected into a well to facilitate production of oil or gas. . . ." [Emphasis added].

31. Section 125.1 (y) of the regulations states [38 Fed. Reg. 13, 530 (1973)] that:

> The term "pollution" means the man-made or man-induced alteration of the chemical, physical, biological and *radiological* integrity of water. [Emphasis added]

32. Although the language of both the Act and the regulations include all radioactive materials as pollutants, the defendants have refused to regulate those radioactive materials encompassed in the definition of source, by-product or special nuclear materials as defined by the Atomic Energy Act of 1954.*

33. The failure of the defendants to regulate all radioactive effluents, as indicated above, will mean that the excluded radioactive materials will not be subjected to the various steps required by the Act leading to the complete elimination of all pollutants from the Nation's navigable waters by 1985.

34. On July 23, 1973, David C. Mastbaum and John I. Taylor, attorneys for plaintiffs, pursuant to 33 U.S.C. Sec. 1365 (b) (2) (Supp. 1973), gave notice by telegram to Robert W. Fri, the then Acting Administrator of the United States Environmental Protection Agency, of their

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* Defendants purports to rely upon portions of the Act's legislative history as contained in a comment in the regulations to exclude such radioactive materials, 38 Fed. Reg. 13, 530 (1973). However, when the entire legislative history is examined, defendants position is in conflict with the great weight of that legislative history.

intention to commence litigation if radioactive materials which are encompassed in the definition of source, by-product or special nuclear materials as defined by the Atomic Energy Act of 1954, were excluded from regulation under the Federal Water Pollution Control Act Amendments of 1972. As of this date, plaintiffs have received no response to the above notice.

35. Plaintiffs have no adequate remedy at law.

RELIEF

WHEREFORE, plaintiffs pray:

1. That this Court declare that all radioactive materials including those encompassed in the definition of source, by-product or special nucelar materials as defined by the Atomic Energy Act of 1954 42 U.S.C. Sec. 2011 *et seq.* are pollutants within the meaning of 33 U.S.C. Sec. 1362 (Supp. 1973).

2. That this Court declare that all radioactive materials being pollutants within the meaning of the Act, the discharge of any such materials by any person is unlawful except as in compliance with the Act 33 U.S.C. Sec. 1311 (a) (Supp. 1973).

3. That this Court order defendants to comply with the 1972 Amendments to the Federal Water Pollution Control Act by regulating the discharge of all radioactive effluents pursuant to the Act 33 U.S.C. Sec. 1311 (a) (Supp. 1973).

4. That this Court award plaintiffs the costs of litigation, including reasonable attorney's fees pursuant to 33 U.S.C. Sec. 1365 (d) (Supp. 1973).

5. That plaintiffs have such other and further relief as this Court may deem just and proper.

/s/ David C. Mastbaum
DAVID C. MASTBAUM
Sugarloaf Mountain
Boulder, Colorado 80302
(303) 444-0993

/s/ John I. Taylor
JOHN I. TAYLOR
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/s/ James L. Phelan
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Room 200
209 - 16th Street
Denver, Colorado 80202
(303) 753-3193
Attorneys for Plaintiffs

October 15, 1973

[CAPTION AND TITLE OMITTED]

MOTION TO DISMISS, OR IN THE ALTERNATIVE SUMMARY JUDGMENT

[Filed in District Court January 18, 1975]

Defendants move this Court, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, to dismiss the Complaint for failure to state a claim upon which relief can be granted. In the alternative, defendants move this Court, pursuant to Rule 56 of the Federal Rules of Civil Procedure, for summary judgment, because there is no genuine issue as to any material fact, and defendants are entitled to judgment as a matter of law.

In support of this motion, the Court respectfully referred to the Memorandum filed herewith.

The defendants respectfully request an oral hearing to be held at the earliest convenience of the Court.

Respectfully submitted,

WALLACE H. JOHNSON
Assistant Attorney General

MARTIN GREEN
Chief, Pollution Control Section

JAMES L. TREECE
United States Attorney

[CAPTION AND TITLE OMITTED]

MOTION FOR JUDGMENT ON THE PLEADINGS, OR IN THE ALTERNATIVE SUMMARY JUDGMENT

[Filed in District Court January 31, 1974]

Plaintiffs move this court pursuant to Rule 12(c) of the Federal Rules of Civil Procedure that judgment be rendered for the plaintiffs herein on the pleadings for the reason that the response of the defendants filed herein shows that the plaintiffs are entitled to judgment as prayed for in the complaint.

In the alternative, plaintiffs move this court pursuant to Rule 56(a) of the Federal Rules of Civil Procedure to enter summary judgment for the plaintiffs on the ground there is no genuine issue as to any material fact, and the plaintiffs are entitled to judgment as a matter of law.

In support of this motion, plaintiffs will submit a memorandum of law within ten days pursuant to Rule 6 of the Local Rules of Practice of the United States District Court for the District of Colorado.

Plaintiffs respectfully request an oral hearing to be held at the earliest convenience of this court.

Respectfully submitted,

David C. Mastbaum
Box 4454
Boulder, Colorado 80302
(303) 534-5237

David E. Engdahl
4375 Butler Circle
Boulder, Colorado 80303
(303) 443-2211 ext. 6911

James L. Phelan
Room 200
209 16th. Street
Denver, Colorado 80202
(303) 753-3193
Attorneys for Plaintiffs

January 30, 1974

[CAPTION AND TITLE OMITTED]

JUDGMENT

[Entered in District Court February 15, 1975]

Pursuant to and in accordance with the Memorandum Opinion Granting Summary Judgment signed and filed by the Honorable Fred M. Winner on the 15th day of February, 1974, it is hereby

ORDERED ADJUDGED and DECREED that the action and complaint herein be and are hereby dismissed and that the request of counsel for the plaintiff for an award of attorneys fees is denied.

IT IS FURTHER ORDERED that the defendants shall have their costs upon the filing of a Bill of Costs with the Clerk of this Court.

DATED AT Denver, Colorado this 15th day of February, 1974.

BY THE COURT

/s/ Fred M. Winner
FRED M. WINNER
Judge
United States District Court

[CAPTION AND TITLE OMITTED]

NOTICE OF APPEAL

[Filed in District Court February 25, 1974]

Notice is hereby given that Colorado Public Interest Research Group, Inc., Colorado Environmental Legal Services, Inc., Morgan Smith, Frank Anders, A. M. Winchester, and Frank L. Boulter, plaintiffs above named, hereby appeal to the United States Court of Appeals for the Tenth Circuit from the final judgment granting defendants' motion for Summary Judgment and dismissing the action and complaint and denying plaintiffs the award of attorneys fees in this action on the 15th day of February, 1974.

Respectfully submitted,

/s/ David C. Mastbaum
David C. Mastbaum
1409 Larimer Square
Denver, Colorado 80202
(303) 892-9900

/s/ David E. Engdahl
David E. Engdahl
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/s/ James L. Kurtz-Phelan
James L. Kurtz-Phelan
209 16th St., Room 200
Denver, Colorado 80202
(303) 753-3193

[EXHIBITS ATTACHED TO PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR JUDGMENT ON THE PLEADINGS FILED IN DISTRICT COURT JANUARY 31, 1974]

[EXHIBIT A]

U.S. ENVIRONMENTAL PROTECTION AGENCY
PERMITS BRANCH, ENFORCEMENT DIVISION
1860 LINCOLN ST., DENVER, COLO. 80203
303+837-3874

FACT SHEET

FACT SHEET RELATIVE TO APPLICATION FOR NPDES PERMIT TO DISCHARGE LIQUID EFFLUENT.

APPLICANT NAME:	Public Service Company Fort St. Vrain Nuclear Generating Station
ADDRESS:	P. O. Box 840 Denver, Colorado 80201
TELEPHONE NUMBER:	303+297-7475
APPLICATION NUMBER:	CO-2SB-OXT-2-000078
PUBLIC NOTICE NUMBER:	CO-73-003

The Public Service Company of Colorado has applied for a permit for its Fort St. Vrain Nuclear Generating Station, P.O. Box 361, Platteville, Colorado, 80651, to discharge liquid effluents.

Applicant is a producer of electric power. The application includes one discrete discharge which consists of blowdown from the circulating water cooling tower and the service water cooling tower, and other minor miscellaneous plant discharges. The discharge is to the South Platte River via the Goosequill Ditch, Jay Thomas Ditch and through the large pond commonly referred to as the Farm Pond. Goosequill Ditch is an unclassified waterway regulated by the basic standards applicable to the State of Colorado. These standards require equiva-

lent secondary treatment with disinfection; no floating or settleable materials which may cause degradation of water quality or aesthetics; and no high temperatures, toxic substances or radioactivity. The South Platte River at the point of confluence with the Goosequill Ditch is classified for industrial and irrigation uses. A more complete description of the discharge and a sketch of their location follows below.

Tentative determinations have been made by the EPA staff in cooperation with the State of Colorado relative to effluent limitations and other conditions to be imposed on the permit. These limitations and conditions will assure that State Water Quality Standards will be protected. The permit conditions are also designed to preclude the discharge of liquid radioactive wastes. Public comments are hereby invited any time prior to May 14, 1973. Comments may be directed to the U.S. Environmental Protection Agency, Enforcement Division, 1860 Lincoln Street, Denver, Colorado 80203—Attention: Permits Branch.

WRITTEN COMMENTS. Interested persons are invited to submit written comments on the proposed discharges and the EPA Regional Administrator's proposed determinations. Comments should be submitted by May 14, 1973, either in person or by mail to: U.S. Environmental Protection Agency, Enforcement Division, 1860 Lincoln Street, Denver, Colorado 80203—Attention: Permits Branch.

The application number should appear next to the above address on the envelope and on the first page of any submitted comments. All comments received by May 14, 1973, will be considered in the formulation of final determinations. If no written objections are received, the EPA Regional Administrator will issue his final determinations no later than 60 days following the date of this notice.

INFORMATION AND COPYING. Persons wishing further information may write to the above address, or call the Permits Branch Office at 303+837-3874. Copies of the application, proposed permit including proposed effluent limitations and special conditions, com-

ments received and other documents (other than those which the EPA Regional Administrator maintains as confidential) are available at the Permits Branch Office for inspection and copying. A copying machine is available for public use at a charge of $0.10 per copy sheet.

REGISTER OF INTERESTED PERSONS. Any person interested in a particular application or group of applications may leave his name, address, and telephone number as part of the file for an application. The list of names will be maintained as a means for persons with an interest in an application to contact others with similar interests.

PUBLIC MEETINGS. If submitted comments indicate significant public interest in the application or if it is believed that useful information may be produced thereby, the Regional Administrator, at his discretion, may hold a public meeting on the application. Any person may request the Regional Administrator to hold a public meeting on an application.

Public notice of a meeting will be published and circulated at least 30 days in advance of the meeting. The meeting will be held in the vicinity of the discharge. The Regional Administrator will provide final determinations within 20 days of the date of the public meeting.

Further information relative to the procedures and nature of public meetings concerning discharge permits may be obtained by calling 303+837-3874 or by writing to the U.S. Environmental Protection Agency, Enforcement Division, 1860 Lincoln Street, Denver, Colorado 80203—Attention: Permits Branch.

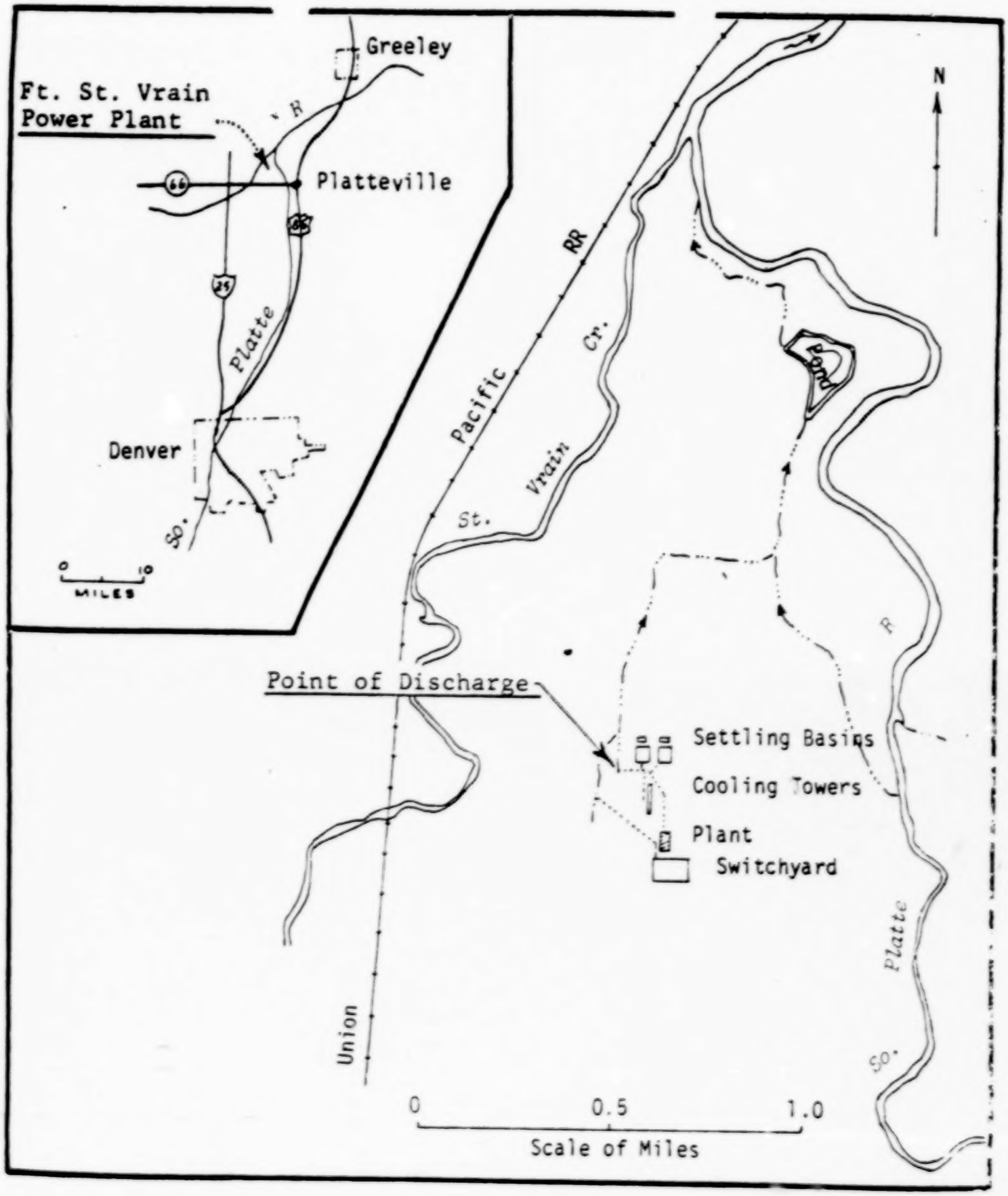
DESCRIPTION OF DISCHARGES

PUBLIC SERVICE COMPANY OF COLORADO
FORT ST. VRAIN NUCLEAR GENERATING STATION

001. (The plant is not yet operational and, therefore, all effluent information is obtained from design calculations.) This discharge will contain all liquid effluents that are to be discharged from the plant. The majority of the discharge will consist of blowdown from the main circulating water cooling tower. Smaller portions of the discharge are from the service water cooling tower, package sewage treatment plant, turbine building sump, and essential plant drains.

The average flow will be approximately three million gpd. The effluent will normally contain all the constituents present in the plant intake (South Platte River water, St. Vrain Creek water, and shallow wells furnish makeup water) at about 2.5 times each concentration.

The temperature of the flow leaving the farm pond should be less than 80°F. The pH range will be 7.0-8.0. The most significant parameter, total dissolved solids will average around 2100 mg/1 with a 2300 mg/1 maximum.



LOCATION OF FORT ST. VRAIN POWER PLANT
PUBLIC SERVICE CO. OF COLORADO
PLATTEVILLE, COLORADO

FINAL TECHNICAL DRAFT OF SPECIAL CONDITIONS FOR DISCHARGE PERMIT

Applicant: Public Service Company—Ft. St. Vrain
Application Number: CO-2SB-OXT-2-000078

1. Operation of Facilities

The permittee is authorized to discharge to the South Platte River through discharge point 001 as described and spatially located in the permit application, an effluent, the quality of which shall not deteriorate below the quality stated in these conditions.

Discharge 001 shall be directed into Goosequill Ditch, and subsequently into the Jay Thomas Ditch, and then into the large pond commonly referred to as the "Farm Pond".

No water associated with the regeneration of demineralizers shall be added to discharge 001 with the exception of final rinse water with a conductivity of less than 300 micromhas per cm.

The permittee shall collect and treat all waste flows from the plant site and discharge them in such a manner as to maximize removal of pollutants from each discharge stream. If present, cooling water shall be collected and treated in such a manner as to achieve the effluent limitations in Section (2) before being discharged into the receiving water.

2. Effluent Limitations

Effective immediately upon issuance of this permit the following limitations (subject to precision and accuracy limitations inherent in the analytical procedures) for the below specified parameters in discharge 001 shall not be exceeded.

Discharge 001

Parameter	Concentration	Total Pounds Per Day	Instantaneous Discharge Rate (Pounds/Day)
pH	6.0-9.0 (gross)[a]		
Total Dissolved Solids	2300 mg/1 (gross)[a]		
Total Suspended Solids	30 mg/1 (gross)[b,c]	none (net)[c]	none (net)[c]
Ammonia Nitrogen		none (net)[d]	none (net)[d]
Chlorine Residual	0.1 mg/1 (gross)[e,e]		
Temperature	(gross)[f]		

[a] Any single analysis and/or measurement beyond this limitation shall be considered a violation of the conditions of this permit.

[b] This limitation shall be determined by the analysis of a properly preserved composite sample composed of a minimum of four (4) grab samples collected at two (2) hour intervals. At no time shall any single analysis and/or measurement be greater than 150 percent of the limitation (1.5 times the limitation).

[c] Subject to precision and accuracy limitations inherent in the analytical procedures, there shall be no increase in the total pounds of Total Suspended Solids discharged over that amount of Total Suspended Solids contained in the inlet makeup water to the cooling towers. The limit of 30 mg/1 shall be met when the circulating water cooling tower is not in operation. This limitation does not apply during times of precipitation if normal surface runoff is entering the discharge.

[d] Subject to precision and accuracy limitations inherent in the analytical procedures, there shall be no increase in the total pounds of ammonia discharged over that amount of ammonia contained in the inlet makeup water to the cooling towers.

[e] This parameter shall be measured in Goosequill Ditch as it enters the Jay Thomas Ditch. This limitation shall be in effect after the first 120 days of commercial operation. A concentration of 0.5 mg/1 shall be allowed for the first 120 days following the start of commercial operation.

[f] This parameter shall be measured at the discharge from the Farm Pond. If, because of atmospheric conditions, the Farm Pond discharge temperature exceeds 80° F, blowdown shall be discharged from the cold side of the circulating water cooling tower.

Limitations in this Section are related to engineering design information. If actual operation reveals inadequacies in this information resulting in violations of the effluent limitations which are due solely to these inadequacies, an implementation schedule shall be established which will achieve the required limitations, should that be environmentally necessary, and it shall become a part of this permit.

For those parameters not covered above, no deterioration beyond effluent quality as shown in the permit application will be allowed.

3. Control of Liquid Radioactive Wastes

The permittee shall study the quantity and strength of liquid radioactive wastes generated within the plant during the twelve (12) month period following the date commercial operation commences. This date shall be considered as the first day the plant is complete, licensed, tested, and has satisfactorily completed the 72-hour demonstration run. This investigation shall be primarily directed toward finding the optimal method of disposal of those wastes which will result in no liquid discharge of radioactivity originating within the plant. Results of this study shall be reported to the Environmental Protection Agency and the State of Colorado within this twelve (12) month period. A compliance schedule for implementing the optimal method of disposal will be established at that time and shall become a part of this permit, subject to review and approval by the Atomic Energy Comimssion pursuant to its authority under the Atomic Energy Act of 1954, as amended. The selected disposal method shall allow no discharge of liquid waste containing radioactivity originating from within the plant unless it has been clearly shown that such a discharge will be less deleterious to the environment than other forms of disposal and unless specific written approval has been obtained from the Environmental Protection Agency and the State of Colorado.

The permittee shall, during the initial twelve (12) month period, minimize the discharge of liquid radioactivity that is generated within the plant. At all times,

all applicable radiation standards, including local, State and Federal regulations shall be met.

4. Basis for Effluent Limitation Calculations

Limitations stated in Section (2) with the notation "net" are calculated on the basis of the net increase of each individual parameter over the quantity of that same parameter present in the intake water. Intake water shall be the water from the South Platte River, St. Vrain Creek and all other sources and measured at the intake into the cooling towers prior to any contamination or use in the process of this facility. Any contaminants contained in any intake water obtained from underground wells shall not be adjusted for as described above and therefore shall be considered as process input to final effluent.

Limitations stated in Section (2) with the notation "gross" are calculated on the basis of gross measurements of each parameter in the designated discharge irrespective of the quantity or quality of those parameters in the intake waters.

5. Batch Discharges

Batch or slug discharges shall be considered a violation of the conditions of this permit, unless prior written approval is received for such manner of discharging from the Regional Administrator of the Environmental Protection Agency. For purposes of this permit, a batch or slug discharge shall be defined as the discharge of any parameter in an amount greater than 150 percent of any limitation shown in Section (2) (1.5 times the limitation).

6. Monitoring Requirements

a. Data Collection

Effective upon receipt of this permit the permittee shall monitor and record, at the frequency and in the manner indicated below, the following parameters associated with the applicable discharge(s). Sample collection, treatment, and preservation shall be in accord with the best methods technologically feasible and shall be in a manner acceptable to the Regional Administrator

of the Environmental Protection Agency or his designated representative. (Consult the Region VIII Treatment and Preservation Guide for basic considerations.)

Analytical and sampling methods utilized by the permittee shall conform to those designated in one of the following references (latest edition) or equivalent methods approved by the Regional Administrator or his designated representative:

(1) *Standard Methods for the Examination of Water and Waste Waters*, Thirteenth Edition. American Public Health Association (New York, New York, 10019), 1971.

(2) *A.S.T.M. Standards*, Part 23, Water: Atmospheric Analysis. American Society for Testing and Materials (Philadelphia, Pennsylvania, 19103), 1970.

(3) *W.Q.O. Methods for Chemical Analysis of Water and Wastes.* Environmental Protection Agency, Water Quality Office, Analytical Quality Control Laboratory (1014 Broadway, Cincinnati, Ohio, 45202), April 1971. PREFERRED.

The permittee must be able to show proof at the request of the Regional Administrator of the Environmental Protection Agency of the accuracy of any flow-measuring device used in obtaining data submitted in the monitoring report. The flow-measuring device must indicate values within 10% of the actual flow being measured.

b. Monitoring Program

At a minimum the following parameters shall be monitored at the frequency and with the type of measurement indicated:

Discharge 001 is to be sampled in Goosequill Ditch at the first point common to all discharges and prior to any dilution or contamination with agricultural waters. Exceptions to this are chlorine residual which is to be measured in the Goosequill Ditch at the Jay Thomas Ditch, and temperature which is to be measured at the overflow from the Farm Pond.

Discharge 001

Parameter-Units	Frequency	Type of Measurement
Flow—mgd	Weekly	Grab
pH—units	Weekly	Grab
Total Dissolved Solids-mg/1	Weekly	8-hour composite
Total Suspended Solids-mg/1	Weekly	8-hour composite
Ammonia Nitrogen—mg/1	Weekly	8-hour composite
Chlorine Residual—mg/1	Weekly	Grab
Temperature—°F	Weekly	Grab
Radiation—See (6) (f)		

A grab sample may be substituted for a composite sample if it has been determined to be equally representative of water quality.

Intake water is to be sampled at the inlet to the cooling towers according to the following schedule; this monitoring may be omitted if the permittee wishes to disclaim the "net" allowance described in Section (4).

Intake

Parameter-Units	Frequency	Type of Measurement
Ammonia Nitrogen—mg/1	Weekly	8-hour composite
Total Suspended Solids-mg/1	Weekly	8-hour composite

A grab sample may be substituted for a composite sample if it has been determined to be equally representative of water quality.

Special Consideration:

If intake water is being supplemented by underground well water, and "net" values are applicable for certain parameters, the well water pumpage rate shall be reported at the same frequency as required for other flow measurements.

c. Records and Reports

The permittee shall record for all samples, the type of sample, date and time of sampling, the analytical

technique used, the date and time analyses were performed, name of person performing analyses, and the results of all analyses. Instrument charts, records of analyses and records of maintenance and/or calibration of instruments shall be retained by the permittee for a minimum of three (3) years and shall be available for inspection in the offices of the permittee's facility. The record retention period may be extended at the direction of the Regional Administrator of the Environmental Protection Agency, and also must be retained during the course of any period of unresolved litigation.

Results shall be reported at quarterly intervals and shall be postmarked by the 15th of the month following the end of the reporting period. The first report shall be submitted for the period ending ————————. Submitted reports shall include the above data.

Reports are to be submitted under the signature of the authorized signing official or his authorized agent, so authorized by letter of delegation.

Send reports to:

(1) U.S. Environmental Protection Agency
Suite 900, 1860 Lincoln Street
Denver, Colorado 80203
Attention: Permits Branch

(2) Colorado Department of Health
Division of Water Pollution Control
4210 East 11th Avenue
Denver, Colorado 80220

d. Alteration of Monitoring

The sampling frequency, sampling point location(s), parameters measured, and reporting procedures will be periodically reviewed by the Environmental Protection Agency and are subject to modification during the period in which this permit is in effect.

e. Other Considerations

Any modifications in water use, waste collection, treatment and disposal facilities; changes in operational pro-

cedures; elimination of discharge; or other significant activities which alter the nature and/or frequency of the discharge(s) or otherwise affect the conditions of this permit, should be enumerated in a written report accompanying the first monitoring report following any of the above alterations.

f. Radiation Monitoring

The permittee shall transmit along with the monitoring report, a duplicate copy of the reports on radioactive liquid discharges required to be submitted to the Atomic Energy Commission and/or the State of Colorado.

7. Unusual Discharge Provisions

a. Oil and Hazardous Material

The permittee shall within 60 days after the issuance of this permit submit an acceptable oil and hazardous material spill prevention and containment plan. Adequacy will be determined by the Environmental Protection Agency. Adequate plans shall include information and procedures relative to the prevention of spills and unplanned discharges of oil and hazardous substances including but not limited to the following:

(1) a brief description of recent spills as they relate to subsequent changes which mitigate against recurrence;
(2) a description of the reporting system which will be used to alert responsible facility management and appropriate legal authorities;
(3) a description of preventative facilities (including overall facility plot) which prevent, contain or treat spills and unplanned discharges;
(4) a list of all oil and hazardous materials used, processed, or stored at the facility which represent a potential spill threat to surface waters;
(5) implementation schedule for additional facilities which might be required in (3) above, but which are not yet operational;

(6) a list of available outside contractors, agencies or other bodies which could be utilized in the event of a spill;
(7) provision for periodic review and updating of the contingency plan.

It shall be a violation of this permit if oil and hazardous material containment and prevention procedures are not implemented as specified above.

The foregoing provisions shall in no way render inapplicable those requirements imposed by Section 311 of the Federal Water Pollution Control Act Amendments of 1972, and regulations promulgated thereunder.

b. Accidental Discharge

The permittee shall immediately notify the Environmental Protection Agency and the State of Colorado by telephone and in writing of any accidental discharge or any other discharge or action or omission which will tend to violate the conditions of this permit. Failure to provide such notification may result in immediate revocation of this permit. Within 15 days of the issuance of the permit, the permittee shall file a statement with the Environmental Protection Agency and the State of Colorado which shall contain the names of the person or persons who are designated to report conditions as noted in this Section as well as Section (9), which will tend to violate permit conditions. In the event of such a condition, the above-named person will report the following information as well as all other pertinent information:

(1) The cause of the accidental or irregular condition.
(2) The anticipated amount of time the discharge or condition is expected to continue or the length of time it did continue if it has been corrected prior to notification.
(3) The contents of the accidental or irregular discharge.
(4) Steps which will be and have been taken by the permittee to mitigate any effect of the irregu-

lar discharge or condition on the receiving water.

(5) The anticipated effect on the receiving water.

(6) Any measures that might be necessary for downstream users to take in order to protect their interests.

(7) What additional monitoring and recording activity is being conducted.

(8) Steps that will be taken to prevent recurrence of the abnormal condition.

Compliance with the provisions of this Subsection shall in no way provide the permittee with immunity from prosecution for violations of the terms of this permit pursuant to Section 309 of the Federal Water Pollution Control Act Amendments of 1972.

8. Solids Disposal

Effluent screenings, sludges or other solid wastes shall not be discharged into the receiving water or tributaries and shall not be disposed of in such a manner as to allow their entry into receiving waters or their tributaries.

9. Oil Discharge

Oil and grease are not to be discharged in any quantities that are harmful as defined pursuant to 40 CFR 110 or any modification thereto for the duration of this permit.

10. Reporting Responsibility

All data and reports shall be subject to Title 18, Section 1001 of the U. S. Code and Section 309 (c) (2) of the Federal Water Pollution Control Act Amendments of 1972, which relate to the making of fraudulent and incorrect statements.

11. Modifications of Effluent Requirements

Modifications in water quality standards and/or the definition of best practical control technology during the duration of this permit may require modifications in effluent requirements and/or additional effluent requirements. These changes will be incorporated in any reissu-

ance of this permit as necessary to achieve compliance with the revised definition of best practical control technology and/or modified water quality standards prior to July 1, 1977.

12. Permit Duration and Reapplication

This permit will be in effect for a period of time up and until May 1, 1978. If the permittee desires to continue to discharge, he shall reapply 180 days before this permit expires on the application forms then in use.

APPLICABLE EFFLUENT LIMITATIONS AND WATER QUALITY STANDARDS

1. Effluent limitations for the demineralizer regenerant, total dissolved solids, ammonia, total suspended solids and pH reflect this Agency's present concept of best practicable treatment for such plants.
2. The present water quality standards list industrial and agricultural uses. All effluent limits are designed to meet existing water quality standards as well as possible upgraded water quality standards to cover a warm water fishery.
3. The temperature limit reflects approximate maximum atmospheric equilibrium temperature which for the mode of discharge will approximate best available treatment.
4. Effluent restrictions and proposed plans concerning liquid radioactive wastes will reflect best available treatment for a new technology.

[EXHIBIT B]

U.S. ENVIRONMENTAL PROTECTION AGENCY
PERMITS BRANCH, ENFORCEMENT DIVISION
1860 LINCOLN ST., DENVER, COLO. 80203
303+837-3874

FACT SHEET

FACT SHEET RELATIVE TO APPLICATION FOR NPDES PERMIT TO DISCHARGE LIQUID EFFLUENT.

APPLICANT NAME: Public Service Company
Fort St. Vrain Nuclear Generating Station

ADDRESS: P. O. Box 840
Denver, Colorado 80201

TELEPHONE NUMBER: 303+297-7475

APPLICATION NUMBER: CO-2SB-OXT-2000078

PUBLIC NOTICE NUMBER: CO-73-003

The Public Service Company of Colorado has applied for a permit for its Fort St. Vrain Nuclear Generating Station, P.O. Box 361, Platteville, Colorado, 80651, to discharge liquid effluents.

Applicant is a producer of electric power. The application includes one discrete discharge which consists of blowdown from the circulating water cooling tower and the service water cooling tower, and other minor miscellaneous plant discharges. The discharge is to the South Platte River via the Goosequill Ditch, Jay Thomas Ditch and through the large pond commonly referred to as the Farm Pond. Goosequill Ditch is an unclassified waterway regulated by the basic standards applicable to the State of Colorado. These standards require equivalent secondary treatment with disinfection; no floating or settleable materials which may cause degradation of water quality or aesthetics; and no high temperatures,

toxic substances [or radioactivity.] The South Platte River at the point of confluence with the Goosequill Ditch is classified for industrial and irrigation uses. A more complete description of the discharge and a sketch of their location follows below.

Tentative determinations have been made by the EPA staff in cooperation with the State of Colorado relative to effluent limitations and other conditions to be imposed on the permit. These limitations and conditions will assure that State Water Quality Standards will be protected. [The permit conditions are also designed to preclude the discharge of liquid radioactive wastes.] Public comments are hereby invited any time prior to May 14, 1973. Comments may be directed to the U.S. Environmental Protection Agency, Enforcement Division, 1860 Lincoln Street, Denver, Colorado 80203—Attention: Permits Branch.

WRITTEN COMMENTS. Interested persons are invited to submit written comments on the proposed discharges and the EPA Regional Administrator's proposed determinations. Comments should be submitted by May 14, 1973, either in person or by mail to: U.S. Environmental Protection Agency, Enforcement Division, 1860 Lincoln Street, Denver, Colorado 80203—Attention: Permits Branch.

The application number should appear next to the above address on the envelope and on the first page of any submitted comments. All comments received by May 14, 1973, will be considered in the formulation of final determinations. If no written objections are received, the EPA Regional Administrator will issue his final determinations no later than 60 days following the date of this notice.

INFORMATION AND COPYING. Persons wishing further information may write to the above address, or call the Permits Branch Office at 303+837-3874. Copies of the application, proposed permit including proposed effluent limitations and special conditions, comments received and other documents (other than those which the EPA Regional Administrator maintains as confidential) are available at the Permits Branch Office for inspection

and copying. A copying machine is available for public use at a charge of $0.10 per copy sheet.

REGISTER OF INTERESTED PERSONS. Any person interested in a particular application or group of applications may leave his name, address, and telephone number as part of the file for an application. The list of names will be maintained as a means for persons with an interest in an application to contact others with similar interests.

PUBLIC MEETINGS. If submitted comments indicate significant public interest in the application or if it is believed that useful information may be produced thereby, the Regional Administrator, at his discretion, may hold a public meeting on the application. Any person may request the Regional Administrator to hold a public meeting on an application.

Public notice of a meeting will be published and circulated at least 30 days in advance of the meeting. The meeting will be held in the vicinity of the discharge. The Regional Administrator will provide final determinations within 20 days of the date of the public meeting.

Further information relative to the procedures and nature of public meetings concerning discharge permits may be obtained by calling 303+837-3874 or by writing to the U.S. Environmental Protection Agency, Enforcement Division, 1860 Lincoln Street, Denver, Colorado 80203—Attention: Permits Branch.

DESCRIPTION OF DISCHARGES

Public Service Company of Colorado
Fort St. Vrain Nuclear Generating Station

001. (The plant is not yet operational and, therefore, all effluent information is obtained from design calculations.) This discharge will contain all liquid effluents that are to be discharged from the plant. The majority of the discharge will consist of blowdown from the main circulating water cooling tower. Smaller portions of the discharge are from the service water cooling tower, package sewage treatment plant, turbine building sump, and essential plant drains.

The average flow will be approximately three million gpd. The effluent will normally contain all the constituents present in the plant intake (South Platte River water, St. Vrain Creek water, and shallow wells furnish makeup water) at about 2.5 times each concentration.

The temperature of the flow leaving the farm pond should be less than 80°F. The pH range will be 7.0-8.0. The most significant parameter, total dissolved solids will average around 2100 mg/1 with a 2300 mg/1 maximum.

[Map identical to that on p. 25, *supra*, deleted]

General Conditions

1. All discharges authorized herein shall be consistent with the terms and conditions of this permit; facility expansions, production increases, or process modifications which result in new or increased discharges of pollutants must be reported by submission of a new NPDES application or, if such new or increased discharge does not violate the effluent limitations specified in this permit, by submission to the Regional Administrator of notice of such new or increased discharges of pollutants; the discharge of any pollutant more frequently than or at a level in excess of that identified and authorized by this permit shall constitute a violation of the terms and conditions of this permit.

2. After notice and opportunity for a hearing, this permit may be modified, suspended, or revoked in whole

or in part during its term for cause including, but not limited to, the following:

a. Violation of any terms or conditions of this permit;

b. Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts;

c. A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge.

3. Notwithstanding (2) above, if a toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is established under Section 307(a) of the Act for a toxic pollutant which is present in the discharge authorized herein and such standard or prohibition is more stringent than any limitation upon such pollutant in this permit, the Regional Administrator shall revise or modify this permit in accordance with the toxic effluent standard or prohibition and so notify the permittee.

4. The permittee shall allow the Director of the Division of Water Pollution Control, the Regional Administrator, and/or their authorized representatives, upon the presentation of credentials:

a. To enter upon the permittee's premises where an effluent source is located or in which any records are required to be kept under the terms and conditions of this permit;

b. To have access to and copy any records required to be kept under the terms and conditions of this permit;

c. To inspect any monitoring equipment or monitoring method required in this permit; or,

d. To sample any discharge of pollutants.

5. The permittee shall at all times maintain in good working order and operate as efficiently as possible all treatment or control facilities or systems installed or used by the permittee to achieve compliance with the terms and conditions of this permit.

6. The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights,

nor any infringement of Federal, State or local laws or regulations.

7. This permit does not authorize or approve the construction of any onshore or offshore physical structures or facilities or the undertaking of any work in any navigable waters.

FINAL TECHNICAL DRAFT OF SPECIAL CONDITIONS FOR DISCHARGE PERMIT

Applicant: Public Service Company—Ft. St. Vrain

Application Number: CO-2SB-2-000078

1. Operation of Facilities

The permittee is authorized to discharge to the South Plattee River through discharge point 001 as described and spatially located in the permit application, affluent, the quality of which shall not deteriorate below the quality stated in these conditions.

Discharge 001 shall be directed into Goosequill Ditch, and subsequently into the Jay Thomas Ditch, and then into the large pond commonly referred to as the "Farm Pond".

No water associated with the regeneration of demineralizers shall be added to discharge 001 with the exception of final rinse water with a conductivity of less than 300 micromhas per cm.

The permittee shall collect and treat all waste flows from the plant site and discharge them in such a manner as to maximize removal of pollutants from each discharge stream. If present, cooling water shall be collected and treated in such a manner as to achieve the effluent limitations in Section (2) before being discharged into the receiving water.

2. Effluent Limitations

Effective immediately upon issuance of this permit the following limitations (subject to precision and accuracy limitations inherent in the analytical procedures) for the below specified parameters in discharge 001 shall not be exceeded.

Discharge 001

Parameter	Concentration	Total Pounds Per Day	Instantaneous Discharge Rate (Pounds/Day)
pH	6.0-9.0(gross)[a]		
Total Dissolved Solids	2300 mg/1(gross)[a]		
Total Suspended Solids	30 mg/1(gross)[bc]	none(net)[c]	none(net)[c]
Ammonia Nitrogen		none(net)[d]	none(net)[d]
Chlorine Residual	0.1 mg/1(gross)[ae]		
Temperature	(gross)[f]		

[a] Any single analysis and/or measurement beyond this limitation shall be considered a violation of the conditions of this permit.

[b] This limitation shall be determined by the analysis of a properly preserved composite sample composed of a minimum of four (4) grab samples collected at two (2) hour intervals. At no time shall any single analysis and/or measurement be greater than 150 percent of the limitation (1.5 times the limitation).

[c] Subject to precision and accuracy limitations inherent in the analytical procedures, there shall be no increase in the total pounds of Total Suspended Solids discharged over that amount of Total Suspended Solids contained in the inlet makeup water to the cooling towers. The limit of 30 mg/1 shall be met when the circulating water cooling tower is not in operation. This limitation does not apply during times of precipitation if normal surface runoff is entering the discharge.

[d] Subject to precision and accuracy limitations inherent in the analytical procedures, there shall be no increase in the total pounds of ammonia discharged over that amount of ammonia contained in the inlet makeup water to the cooling towers.

[e] This parameter shall be measured in Goosequill Ditch as it enters the Jay Thomas Ditch. This limitation shall be in effect after the first 120 days of commercial operation. A concentration of 0.5 mg/1 shall be allowed for the first 120 days following the start of commercial operation.

[f] This parameter shall be measured at the discharge from the Farm Pond. If, because of atmospheric conditions, the Farm Pond discharge temperature exceeds 80° F, blowdown shall be discharged from the cold side of the circulating water cooling tower.

Limitations in this Section are related to engineering design information. If actual operation reveals inadequacies in this information resulting in violations of the effluent limitations which are due solely to these inadequacies, an implementation schedule shall be established which will achieve the required limitations, should that be environmentally necessary, and it shall become a part of this permit.

For those parameters not covered above, no deterioration beyond effluent quality as shown in the permit application will be allowed.

3. Basis for Effluent Limitation Calculations

Limitations stated in Section (2) with the notation "net" are calculated on the basis of the net increase of each individual parameter over the quantity of that same parameter present in the intake water. Intake water shall be the water from the South Platte River, St. Vrain Creek and all other sources and measured at the intake into the cooling towers prior to any contamination or use in the process of this facility. Any contaminants contained in any intake water obtained from underground wells shall not be adjusted for as described above and therefore shall be considered as process input to the final effluent.

Limitations stated in Section (2) with the notation "gross" are calculated on the basis of gross measurements of each parameter in the designated discharge irrespective of the quantity or quality of those parameters in the intake waters.

4. Batch Discharges

Batch or slug discharges shall be considered a violation of the conditions of this permit, unless prior written approval is received for such manner of discharging from the Regional Administrator of the Environmental Protection Agency. For purposes of this permit, a batch or slug discharge shall be defined as the discharge of any parameter in an amount greater than 150 percent of any limitation shown in Section (2) (1.5 times the limitation).

5. Monitoring Requirements

a. Data Collection

Effective upon receipt of this permit the permittee shall monitor and record, at the frequency and in the manner indicated below, the following parameters associated with the applicable discharge(s). Sample collection, treatment, and preservation shall be in accord with the best methods technologically feasible and shall be in a manner acceptable to the Regional Administrator of the Environmental Protection Agency or his designated representative. (Consult the Region VIII Treatment and Preservation Guide for basic considerations.)

Analytical and sampling methods utilized by the permittee shall conform to those designated in one of the following references (latest edition) or equivalent methods approved by the Regional Administrator or his designated representative:

(1) *Standard Methods for the Examination of Water and Waste Waters,* Thirteenth Edition. American Public Health Association (New York, New York, 10019), 1971.

(2) *A.S.T.M. Standards,* Part 23, Water: Atmospheric Analysis. American Society for Testing and Materials (Philadelphia Pennsylvania, 19103), 1970.

(3) *W.Q.O. Methods for Chemical Analysis of Water and Wastes.* Environmental Protection Agency, Water Quality Office, Analytical Quality Control Laboratory (1014 Broadway, Cincinnati, Ohio, 45202), April 1971. PREFERRED.

The permittee must be able to show proof at the request of the Regional Administrator of the Environmental Protection Agency of the accuracy of any flow-measuring device used in obtaining data submitted in the monitoring report. The flow-measuring device must indicate values within 10% of the actual flow being measured.

b. Monitoring Program

At a minimum the following parameters shall be monitored at the frequency and with the type of measurement indicated:

Discharge 001 is to be sampled in Goosquill Ditch at the first point common to all discharges and prior to any dilution or contamination with agricultural waters. Exceptions to this are chlorine residual which is to be measured in the Goosquill Ditch at the Jay Thomas Ditch, and temperature which is to be measured at the overflow from the Farm Pond.

Discharge 001

Parameter-Units	Frequency	Type of Measurement
Flow—mgd	Weekly	Grab
pH—units	Weekly	Grab
Total Dissolved Solids-mg/1	Weekly	8-hour composite
Total Suspended Solids-mg/1	Weekly	8-hour composite
Ammonia Nitrogen—mg/1	Weekly	8-hour composite
Chlorine Residual—mg/1	Weekly	Grab
Temperature—°F	Weekly	Grab
Radiation—See (5)(f)		

A grab sample may be substituted for a composite sample if it has been determined to be equally representative of water quality.

Intake water is to be sampled at the inlet to the cooling towers according to the following schedule; this monitoring may be omitted if the permittee wishes to disclaim the "net" allowance described in Section (3).

Intake

Parameter-Units	Frequency	Type of Measurement
Ammonia Nitrogen—mg/1	Weekly	8-hour composite
Total Suspended Solids-mg/1	Weekly	8-hour composite

A grab sample may be substituted for a composite sample if it has been determined to be equally representative of water quality.

Special Consideration:

If intake water is being supplemented by underground well water, and "net" values are applicable for certain parameters, the well water pumpage rate shall be reported at the same frequency as required for other flow measurements.

c. Records and Reports

The permittee shall record for all samples, the type of sample, date and time of sampling, the analytical technique used, the date and time analyses were performed, name of person performing analyses, and the results of all analyses. Instrument charts, records of analyses and records of maintenance and/or calibration of instruments shall be retained by the permittee for a minimum of three (3) years and shall be available for inspection in the offices of the permittee's facility. The record retention period may be extended at the direction of the Regional Administrator of the Environmental Protection Agency, and also must be retained during the course of any period of unresolved litigation.

Results shall be reported at quarterly intervals and shall be postmarked by the 15th of the month following the end of the reporting period. The first report shall be submitted for the period ending March 31, 1974. Submitted reports shall include the above data.

Reports are to be submitted under the signature of the authorized signing official or his authorized agent, so authorized by letter of delegation.

Send reports to:

(1) U.S. Environmental Protection Agency
Suite 900, 1860 Lincoln Street
Denver, Colorado 80203
Attention: Permits Branch

(2) Colorado Department of Health
Division of Water Pollution Control
4210 East 11th Avenue
Denver, Colorado 80220

d. Alteration of Monitoring

The sampling frequency, sampling point location(s), parameters measured, and reporting procedures will be periodically reviewed by the Environmental Protection Agency and are subject to modification during the period in which this permit is in effect.

e. Other Considerations

Any modifications in water use, waste collection, treatment and disposal facilities; changes in operational procedures; elimination of discharge; or other significant activities which alter the nature and/or frequency of the discharge(s) or otherwise affect the conditions of this permit, should be enumerated in a written report accompanying the first monitoring report following any of the above alterations.

f. Radiation Monitoring

The permittee shall transmit along with the monitoring report, a duplicate copy of the reports on radioactive liquid discharges required to be submitted to the Atomic Energy Commission and/or the State of Colorado.

6. Unusual Discharge Provisions

a. Oil and Hazardous Material

The permittee shall within 60 days after the issuance of this permit submit an acceptable oil and hazardous material spill prevention and containment plan. Adequacy will be determined by the Environmental Protection Agency. Adequate plans shall include information and procedures relative to the prevention of spills and unplanned discharges of oil and hazardous substances including but not limited to the following:

(1) a brief description of recent spills as they relate to subsequent changes which mitigate against recurrence;

(2) a description of the reporting system which will be used to alert responsible facility management and appropriate legal authorities;
(3) a description of preventative facilities (including overall facility plot) which prevent, contain or treat spills and unplanned discharges;
(4) a list of all oil and hazardous materials used, processed, or stored at the facility which represent a potential spill threat to surface waters;
(5) implementation schedule for additional facilities which might be required in (3) above, but which are not yet operational;
(6) a list of available outside contractors, agencies or other bodies which could be utilized in the event of a spill;
(7) provision for periodic review and updating of the contingency plan.

It shall be a violation of this permit if oil and hazardous material containment and prevention procedures are not implemented as specified above.

The foregoing provisions shall in no way render inapplicable those requirements imposed by Section 311 of the Federal Water Pollution Control Act Amendments of 1972, and regulations promulgated thereunder.

b. Accidental Discharge

The permittee shall immediately notify the Environmental Protection Agency and the State of Colorado by telephone and in writing of any accidential discharge or any other discharge or action or omission which will tend to violate the conditions of this permit. Failure to provide such notification may result in immediate revocation of this permit. Within 15 days of the issuance of the permit, the permittee shall file a statement with the Environmental Protection Agency and the State of Colorado which shall contain the names of the person or persons who are designated to report conditions as noted in this Section as well as Section (8) which will tend to violate permit conditions. In the event of such a condition, the above-named person will

report the following information as well as all other pertinent information:

(1) The cause of the accidental or irregular condition.
(2) The anticipated amount of time the discharge or condition is expected to continue or the length of time it did continue if it has been corrected prior to notification.
(3) The contents of the accidental or irregular discharge.
(4) Steps which will be and have been taken by the permittee to mitigate any effect of the irregular discharge or condition on the receiving water.
(5) The anticipated effect on the receiving water.
(6) Any measures that might be necessary for downstream users to take in order to protect their interests.
(7) What additional monitoring and recording activity is being conducted.
(8) Steps that will be taken to prevent recurrence of the abnormal condition.

Compliance with the provisions of this Subsection shall in no way provide the permittee with immunity from prosecution for violations of the terms of this permit pursuant to Section 309 of the Federal Water Pollution Control Act Amendments of 1972.

7. Solids Disposal

Effluent screenings, sludges or other solid wastes shall not be discharged into the receiving water or tributaries and shall not be disposed of in such a manner as to allow their entry into receiving waters or their tributaries.

8. Oil Discharge

Oil and grease are not to be discharged in any quantities that are harmful as defined pursuant to 40 CFR 110 or any modification thereto for the duration of this permit.

9. Reporting Responsibility

All data and reports shall be subject to Title 18, Section 1001 of the U.S. Code and Section 309(c)(2) of the Federal Water Pollution Control Act Amendments of 1972, which relate to the making of fraudulent and incorrect statements.

10. Modifications of Effluent Requirements

Modifications in water quality standards and/or the definition of best practical control technology during the duration of this permit may require modifications in effluent requirements and/or additional effluent requirements. These changes will be incorporated in any reissuance of this permit as necessary to achieve compliance with the revised definition of best practical control technology and/or modified water quality standards prior to July 1, 1977.

11. Permit Duration and Reapplication

This permit will be in effect for a period of time up and until May 1, 1978. If the permittee desires to continue to discharge, he shall reapply 180 days before this permit expires on the application forms then in use.

APPLICABLE EFFLUENT LIMITATIONS AND WATER QUALITY STANDARDS

1. Effluent limitations for the demineralizer regenerant, total dissolved solids, ammonia, total suspended solids and pH reflect this Agency's present concept of best practicable treatment for such plants.
2. The present water quality standards list industrial and agricultural uses. All effluent limits are designed to meet existing water quality standards as well as possible upgraded water quality standards to cover a warm water fishery.
3. The temperature limit reflects approximate maximum atmospheric equilibrium temperature which for the mode of discharge will approximate best available treatment.
4. [Effluent restrictions and proposed plans concerning liquid radioactive wastes will reflect best available treatment for a new technology.]

SUPREME COURT OF THE UNITED STATES

No. 74-1270

RUSSELL TRAIN, Administrator of the Environmental Protection Agency, et al., PETITIONERS

v.

COLORADO PUBLIC INTEREST RESEARCH GROUP, INC., et al.

ORDER ALLOWING CERTIORARI. Filed June 2, 1975.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Tenth Circuit is granted.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1975 570073 170